

REMARKS

The applicants respectfully request that the preliminary amendment be entered. Support for newly added claims 91-103 can be found in at least examples 1, 2, 4 and 7 and in the specification at pages 2, 3 and 13. These examples are microemulsion forming concentrates. Claim 104 is identical to claim 1 of Herold, US Publication No. 2003-0148889 ("Herold"). Claims 1 and 91-104 are now in this application.

Herold, was published on August 7, 2003 and claims benefit to an earlier filing date of September 26, 2001. Claim 104 is identical to claim 1 of Herold. Claim 91 corresponds to claims 1-3 of Herold. Since claim 92 uses closed language "consisting of" and excludes any other ingredients, claim 92 encompasses claims 4 and 5 of Herold. Claim 93 corresponds to claim 6 of Herold. Claim 94 corresponds to claim 7 of Herold. Claim 95 corresponds to claim 8 of Herold. Claim 96 corresponds to claims 9-11 of Herold. Claim 97 corresponds to claim 12 of Herold. Claim 98 corresponds to claim 13 of Herold. Claim 99-103 corresponds to claims 21, 29, 30, 31, 32 and 33 of Herold. Examples 1, 2, 4 and 7 were disclosed in the provisional application Serial No. 60/250,547 filed December 1, 2000. This is over 9 months before the provisional application of Herold was filed.

The applicants respectfully request that an interference be declared. The count of the interference should be (a) claim 1 of Herold or (b) claim 1 of Herold or claim 91 of this application.

The applicants believe the claims 91-103 of this application would correspond to count 1. The applicants believe that all the allowed claims of Herold, claims 1-13, 21-23 and 29-36 would correspond to count 1. None of the Herold's claims are patentably distinct.

The herbicide concentrate containing 2,4-D is typically diluted with over about 90% water depending on the application and the crop being treated. For example, the herbicide concentrate containing 2,4-D is typically diluted with about 87.5 to 99.5% by weight water. This is the typical standard (see for example Weedar[®] 64 from Nufarm (see enclosed), which describes a dilution of a ½ a pint up to 3 pints of 2,4-D amine herbicide to 3 gallons up to 15 gallons of water (with the lower limit of water being 3 pints of 2,4-D amine herbicide to 3 gallons of water (87.5% water) and the upper limit being ½ pint of 2,4-D amine herbicide to 15 gallons of water (99.58% water))) and (Nufarm Weedone[®] LV4 EC (see enclosed) discloses a dilution range of 1 pint of 2,4-D amine herbicide to 1 gallons of water (87.5% water) and 1 pint of 2,4-D amine herbicide to 30 gallons of water (99.6% water)). A typical range for diluting 2,4-D amine herbicides is with 87.5 to 99.6% by weight water. Therefore, the dilution rate claimed in Herold is not novel or unobvious in view of this application.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 00306-00355-US from which the undersigned is authorized to draw.

Respectfully submitted,

By

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Enclosure: Weedar[®] 64 from Nufarm and Nufarm Weedone[®] LV4 EC

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